

OFFICE OF THE APPELLATE DEFENDER

REPORT TO THE MONTANA PUBLIC DEFENDER COMMISSION

February 1 – April 1, 2010

UPDATES:

Pay Plan: Randi Hood, Harry Freebourn, and Barb Kain submitted their formal proposal to the appellate attorneys regarding the pay plan. The appellate attorneys, in turn, altered some of the provisions and are awaiting further discussion from Central Management. It appears the appellate attorneys are largely comfortable with the pay plan, and we all hope to have a working pay plan soon for its incorporation in the next biennium decision package.

Caseloads: All of the appellate attorneys are still carrying around five cases that require opening briefing and around five cases that require reply briefing. They consistently respond to inquiries from trial attorneys and provide feedback on any potential writ of supervisory control questions we receive. ADO's caseload grew exponentially in February, having taken in 20 cases. There were only 20 working days in February. Again, the contract attorneys have assisted greatly in managing this caseload.

Conflict Issue: On April 21, 2010, in Helena, Montana, the conflict case challenging the structure of the appellate office was argued. Colin Stephens represented Sellers. I argued on behalf of the ADO as the respondent. During argument, I noted that the St. Dennis case is also pending. Briefing in St. Dennis will be completed late May. I will keep the Commission apprised of any developments regarding Sellers or St. Dennis. Please note that I did not file an amicus brief in St. Dennis.

Cost Saving Measures: I have drafted a letter to Chief Justice McGrath regarding the cost saving measures proposed by the appellate office through Liaison Lisa Korchinski. I have also contacted Assistant Attorney General Mark Mattioli who is discussing the proposal with others. I will update the Commission once I have more information.

CASES:

The spreadsheet showing the case count for the appellate office for fiscal year 2010 is attached as Exhibit 1. Noteworthy is the fact that our base is still growing each month, even though in March we closed 9 cases.

OTHER INFORMATION:

Evaluation Forms for Chief: I have samples of evaluation forms for managers. I will work with Commissioner Fleming to develop a form to be used for the Commission's evaluation of my work performance.

Stats: Commissioner Petaja asked me the percentages of cases that involve revocations. The attached Exhibit 2 shows a rough breakdown of the appellate cases by case types. Noteworthy is the fact that a large percentage of our cases involve appeals from plea deals.

Supreme Court Evaluation: The possibility of an ADO evaluation by the Supreme Court was discussed with the ADO team/staff. Overall, the idea of this type of evaluation was welcomed, however after initial discussion of the idea, the attorneys raised questions, concerns, possible issues, and suggestions for the process/procedure of the evaluation. Liaison Lisa Korchinski will provide additional information and insight.